

NOTES ON NEW BOOKS.

THE CONSTITUTION OF ENGLAND, or an Account of the English Government; in which it is compared both with the Republic of France and the other Monarchies of Europe. By J. L. DE LOMÉ. A new edition, with Life and Notes, by JOHN MACGREGOR, M.P. London: Henry G. Bohn, 1853.

It is a fact not unworthy of consideration that the English Constitution and the English Government have found among Frenchmen such able expositors as a Montesquieu, a De Lolme, and a Guizot. The book before us, and of which a new edition is here offered to the public, was first written in French, and published in Holland in the year 1770. The work did not appear in an English form, as Mr. Macgregor informs us, until the year 1827, and did not prove successful in a pecuniary point of view, although published by subscription. De Lolme, indeed, seems, from the account we have before us of his life and character, to have inherited along with genius all its besetting sins and infirmities. Improvident and extravagant in the highest degree, he speedily squandered the large sums which occasionally fell into his hands from successful gambling or speculations in the funds. He procured a full military education in the last years of his life, and equipped with sword and bag-wig, he day only to the tattered garments of a shabby ragsman to move.

But whatever may have been the eccentricities and irregularities of De Lolme, he must be admitted to have given in the present work an admirable exposition of the English constitution in its practical operation, and of the English Government in its practical bearings; and it is no small tribute to the sagacity of the author that he has more truly written an account of the British Government and institutions as they are at the present day than when he wrote. The principles which he here enunciates as lying at the basis of English law, order, and liberty had not in his day reached their present development; but the bud and blossom do not more surely give passage of the fruit in its season than do abstract principles, when firmly rooted in the polity of a nation, ensure the concrete results which transform public opinion into organic law. The constitution and laws of Great Britain are now so nearly similar to those delineated by M. De Lolme that a new edition of his "admirable work," with appropriate notes and illustrations, seems to Mr. Macgregor well adapted to the present time.

The civil history of England is a history of the gradual formation of her present constitution. The principles which lie at its basis, and which give it form and structure, have been the slowly-evolved growth of centuries, in so much that it more than equals in stability what it lacks in symmetry. Irregular in outline, it is immovable in foundation as is the island home, "rock-ribbed and sea-girt," over which it spreads a protecting shield. It is difficult to ascertain and fix the origin of those distinctive principles which have resulted in the formation of the English constitution. It is difficult to say how much of that stream which flowed on, acquiring breadth and strength during the reigns of Alfred and Edward the Confessor, originally percolated through the old Saxon and Scandinavian elements which had entered into the national character of the great British Empire. Certain it is, however, that the "common law" of Magna Charta itself are founded on the pre-existing Anglo-Saxon laws of Ina, Alfred, and of Edward the Confessor; for, as Alison Sydney argues, "the Magna Charta was made to assert the native and original liberties of the nation by a confession of the King then being that neither he nor his successors should ever encroach upon them."

The era of the conquest of England by William the Conqueror certainly opens a new period in English history, or, as Spelman states it, *novum regni nascitur ordo*; and yet we imagine that the changes introduced by the accession of William have by some historians been greatly misconceived, and by others greatly exaggerated, simply from a forgetfulness of the characteristics which marked the age in which it occurred. The great advantage resulting from the conquest of England by William is to be sought in the fact that it instituted a strong national government, undivided from and to some extent antagonistic to the local governments of the Tithes, the Hundred, and the County. By the system of mutual checks and balances was at once partially established, and though for a time the feudal and monarchial power stood so contrarily that of the people, yet in the end a state of equilibrium was attained and rendered more stable by the action and reaction which for a time interrupted it. The royal power, by its pretensions and encroachments, roused and fostered in the subordinate and principal governments of the people a spirit of resistance which kept the political life from dying out at the exchequer. In France the royal power arose differently, and led of course to different results. The King, from being the mere puppet of his liege lords and grandees, here became at last the sole power in the State, until he could trample exclaim, in the person of Louis Quatorze, *l'Etat c'est moi*. The several provinces into which France was at first divided came in process of time to be reunited to the domain of the monarch by conquest, by treaty, or by force. And a further consequence of the difference between the times of these reunions, as the French law deems them, was that the several parts of the realm became a governmental unity without any national sense of union. As province after province was in this way slowly absorbed by the central power, an overshadowing despotism was formed, beneath which the tender plant of liberty soon withered and died. To this day France is still reaping the tares which the Capets sowed in the night of the dark ages. Possessing no government save that at Paris, she is just the land in which a government is the most needed and yet the most precarious; where the government should be the most stable, but is actually the most unstable. In England the power of the monarch was consolidated at once, and in a way which eventually united the barons of the realm in resistance against his encroachments. In France the power of the monarch was consolidated gradually, and in a way which destroyed all concert of action on the part of the subjected provinces. The England the excess of the sovereign power conducted the freedom by provoking to revolt. In France it promoted civil servitude by crushing all combinations for the cause of the people.

During the reign of Henry I, about forty years after the conquest, the rigor of the feudal laws was mitigated by the king favor of the lords, and what was more, on the condition that the lords should grant similar concessions to their vassals. Under Henry II, the ancient trial by jury was restored—not instituted, as some have asserted. In the year 1215 the sturdy barons extorted from King John the Magna Charta of the Forest, and that other instrument and buttress of English liberty known by the name of the Great Charter, and of whose thirty-ninth article, commencing *Nullus liber homo capietur, &c.*, Lord Carnley was wont to say, in spite of its barbarous Latin phraseology, it was worth all the classics put together. Under Edward I, Parliaments were not only authorized but legally instituted, and composed in part of deputies from towns and boroughs. Magna Charta was eleven times confirmed, and in the statute *de tallagio non concedendo* it was decreed that no tax should be laid nor impost levied without the joint consent of the Lords and Commons, a statute which constitutes the guarantee of that liberty which Magna Charta is the basis. "Now, in my opinion," says Philippe de Comines, in times not much posterior to these, "among all the sovereigns I know in the world, that in which the public good is best attended to, and the least violence exercised on the people, is that of England."

During the reigns of Edward II, and III, and of Henry IV, the power of the Commons was increased slowly but gradually, and the changes which were therefore the more adapted to engage the attention of the people and

to coincide with the ancient principles of the Constitution. Thus succeeded the wars of the Roses, and for thirty years the laws were silenced by the din of arms. The Tudor dynasty which succeeded reinstated the rule of arbitrary prerogative, and in the person and reign of Henry VIII, English despotism reached its culminating point. "But before the end of Queen Elizabeth's reign the Commons re-asserted their legislative authority; the Parliaments arose; and even Hume admits that 'the sparks of liberty had been kindled and preserved by the Parliaments alone; to the sect, whose principles were so frivolous and habits so ridiculous, the English were the whole freedom of their Constitution.'"

The Stuart next waded the destinies of England. The pretensions of James I. and his assertion of the divine right of Kings waded a spirit of rebellion which was ripened into actual revolt and civil war by the insincerity and tergiversations of Charles I. The Petition of Right was passed by the Parliament of 1640, being drawn up by Sir Edward Coke, then an octogenarian, and who had lived in "young America," would have been declared by the wise Constitutions of some of our States incapacitated for "judicial functions" by reason of age. When finally the royal power was annihilated by the degradation of Charles, the strong hand of Cromwell grasped the reins of government. There was, at this time, at this period an interregnum in the English monarchy, but the self-government of the people, as Mr. Macgregor well observes, existed then as now. Then as now the people were equally disposed to obey the laws; to cherish the maintenance of order; to observe a high reverence for morality and religion. Cromwell dying, no one of his family or party was found able to take his place. Charles II. was accordingly recalled from exile, and in the first flush of the popular enthusiasm and loyalty, the Parliament neglected to make any provisions against his abuse of the royal power. But this tacit acquiescence was of short duration. Triennial Parliaments were soon demanded and obtained, and the Habeas Corpus Act was carried. The deposition of James II. and the election of William and Mary to the throne in 1689 placed at last the liberties of England on a sure foundation. The Bill of Rights was passed and the liberty of the press secured. Since this period the ameliorations in the English Constitution have been procured by the normal and legitimate exercise of its functional powers, and, as De Lolme observes, "while it is not true that the English Government is free from abuses, or that all possible good laws are enacted, yet there is a constant tendency in it both to correct the one and improve the other."

We have reverted to these great "liberty-statutes" in the history of England not so much for the sake of analyzing the elements of freedom which they severally contain as in order to illustrate the slow but steady growth of the English Constitution. "There is nothing in history," says a late writer, "finer than the tale these statutes tell of the popular soul-travail that brought them one by one to the birth, a progeny of public virtue, such as constancy and perseverance, as at least was never exhibited by any other people under corresponding trials. Reaction against bad government may happen any where and any number of times, but such movements are apt to be transitory and without definite aim—a sort of volcanic breaking up of the crust of a nation, and the elements of a new order, low save that it will be a change. The struggles of English freedom have been widely different. They have had a principle in them—I mean a thinking as well as a feeling principle—and this mind being intellectual and moral in due proportion of parts, and having thus the elements of a political habit, has seemed to be immortal in purpose and energy."

There is a Latin adage often quoted by demagogues, "to tickle the ears of the groundlings," which declares that "the voice of the people is the voice of God"—a sentiment as untrue in politics as it is blasphemous in theology. But so far as any thing human, and therefore erring, can lay claim to infallibility, we suppose the common sense of the many minds of a race working in the same channels for many ages may as plausibly assert its claim as any thing else under the sun. Now, in the English constitution and in the English common law we have the aggregated results, political and judicial, of this common sense, as exercised in government and law, in continuous vigor and activity from age to successive age; and thus it is that demagogic, rash counsels, hasty decisions, conflicting precedents, have been almost wholly eliminated from the English state and the English jurisprudence. Time overthrows the illusions of opinion, but establishes the decisions of nature.

They manage these matters otherwise in France. Three revolutions in the code political or civil are originated *de novo*, and sprung upon the nation *per saltum*. The Gaul seems to think the founding of States and Empires to be one of the exact sciences, and your Abbé Montesquieu and poetical Lamarlines can improvise at five minutes' notice a constitution which sounds grandly and possesses every requisite of a perfect Government save one—that it will not work except on paper. When the amiable statesman last mentioned proclaimed universal suffrage, or, as he phrased it, "l'arbitrage de masses au droit politique," he deemed himself to have made a nation of freemen; but, alas! for his patriotic hopes, they only used the liberty he gave them to forge still stronger fetters wherewith to enthrall themselves. When the people do not wish to be free the institutions of freedom are not likely to be highly prized or wisely administered. If we may judge from the solemn and deliberate sentence passed upon themselves by the French, they do not wish to be free; they wish to feel the strong hand of government resting on the body politic; for, since civil rights and law and order are marvellous to the general welfare than any mere theory of systematic politics, the French are always glad to secure the former by bartering away a tumultuous republic for a stable despotism. The contrast between the English and French Governments sufficiently evinces which of the two nations has chosen the wiser and safer line of political action.

In some recent observations which we took occasion to offer in German work by GERVASIUS, entitled, "An Introduction to the History of the Nineteenth Century," we made passing allusion to his disquisition on the English Constitution, and partly promised to translate it for our readers. In redeeming our engagement to-day, we have only to commend it to their attention as a specimen of philosophical condensation in style and sentiment which we have rarely seen exceeded; and with it we close our remarks on the present topic.

"Among modern nations the British people present the greatest example of those mixed Constitutions whose character has been so often and so justly commended in the fact that they combine all the advantages of Monarchy, Aristocracy, and Democracy, without their evils. The structure of the English Constitution has not been uniformly prosecuted according to any one original plan, but its latest perfectors have known how to bring its pre-existing portions into admirable and harmonious accommodation with their last additions. Centuries have labored on it, but the material and the workmanship have always been the best. No modern State has passed through a history so normal as that of England, and the phases of civil development have nowhere been so purely and sharply defined as here. The old Germanic Constitution, under the institutions of its patriarchal royalty, appears nowhere so complete as among the Anglo-Saxons; other branches of the race, from its early period, has left behind it its valuable law-books or such literary treasures as its nobility has been able to accumulate so completely in its beginnings or so permanently established as that of the Normans in England, and no other aristocracy has evinced so much political capacity as the English. Nowhere else has the royal absolutism, on the one hand, been willing to use its power at home and abroad so beneficently, or, on the other, been able to abuse it so little as in England. And, in fine, the commonality has nowhere else contributed to the State so much power and won for it a political influence so great as here."

"Hence it was that, after the year 1689, the Constitution was amended and secured by new stipulations, no one was found desirous to excise or abridge any one of these civil elements which had all proved themselves useful. They believed themselves to be securing the more stability to the State the more they secured its tried and effective power. The commonality yielded to the nobility its great estates, which the Republic would have divided according to the precepts of agrarianism; it felt itself secure in its industrial property, and it was not until, moreover, it was in a small degree infected from the fact that the great landed possessions were found exclusively in the hands of the nobles. The nobility yielded to the commonality its property."

"Mr. Warner: 'Liberties of America,' by H. W. Warner. New York, G. P. Putnam & Co.

sonal property, the civil patronage and protection of its industry, and its growing power in the lower house of its Legislature. The rights of the Commons, and the rights of the taxes and credit of the Commons, and at the same time, by reason of their leisure and statesmanlike, felt secure of their own influence. Both estates together, not being kept asunder by the prejudices of birth, but reticulated to each other by reciprocal interests, not being politically arrayed one against the other by diverse interests, but each equally divided among themselves by the most natural difference of political principles, both estates together apprehended the usefulness of one sole head over their united States, at that time without any common Legislature, and therefore preserved monarchy, while to some extent limiting the royal prerogative. 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